

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO.23 OF 1978

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JASHUBEN BABUBHAI

Versus

SHIRIN JEHNIGIR VESUNG

Appearance:

MR RAJNI H MEHTA for Petitioner
SERVED for Respondent No. 1, 3, 4
UNSERVED AS EXPIRED for Respondent No. 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 23/12/96

ORAL JUDGEMENT

One Sorabji Cooper had 3 sons, Kavasji, Faramji and Ratansha. The suit property which belonged to Sorabji devolved on his sons. The plaintiffs are the heirs and legal representatives of Faramji. They filed the suit for possession against the son of Kavasji. Kavasji's son Kera Bamensha Damanwala is defendant No.2. He has not appeared and contested in the suit. The plaintiffs alleged that Kavasji has no right title or interest in suit property and he has given up all his rights by a partition deed of 1944. It is further submitted by the plaintiffs that Kavasji had no right and

was a trespasser in the suit property and he inducted by letting the stable to the maid servant Jashiben (defendant No.1). The plaintiffs prayed for a decree for possession against the defendants. The defendant No.2 did not appear at all. A decree for possession is passed against the defendant No.1. The defendant No.1 Jashiben preferred an appeal to the District Court and failed. This is Second Appeal by her. Her contention is that she has been in possession lawfully and as a tenant inducted by the defendant No.2 for all these years and she has produced merely 100 receipts being Exh.Nos.66 and 162 from 7th June, 1961 to 7th January, 1971. The genuineness and truthfulness of these receipts is not doubted and is not in dispute.

2. It is therefore, submitted that the lower Court has erred in decreeing a suit of possession against the appellant on the ground that she is a trespasser.

3. It is not disputed that she was inducted by Kavasji. Only contention and ground for eviction is that Kavasji had no authority to let the premises and she could not be treated as the legal tenant for the suit premises. The lower Court has also observed that it is true that the rent receipts produced in this case go to show that Kavasji- the father of defendant No.2 had let the suit stable to defendant No.1 and had passed the rent receipts which have been produced by the defendant No.1 in this case. The lower Appellate Court has further proceeded to observe that but the question was rather said Kavasji had any right to lease out a suit property to defendant No.1. The lower Appellate Court held that as he was not the owner of the suit property, he could not have create a lease.

4. It is not to be forgotten that Kavasji is a son of Sorabji Cooper-original owner and brother of plaintiff Faramji who was residing at Bombay. The property register of the municipal authority produced at Exh.59 shows that the suit property stands in joint names of Kavasji, Faramji and Ratansha-sons of Sorabji Cooper. This is an extract of the municipal house tax for the year 1963-64. In these circumstances, it would be clear that even though defendant No.2 may not be the owner, he was atleast ostensible owner and rent collector on behalf of the owner. More particularly when he and defendant No.1 have been in possession for such a long period of more than 10 years, it is impossible to believe that the plaintiffs did not know about the defendant No.1 being in possession. Even though there may not be any proof collusion between the plaintiffs and defendant

No.2Kavasji and there may be in fact some litigations between them, the fact remains that defendant No.1 has been in long possession lawfully and on payment of rent for which regular receipts have been issued by the defendant No.2. Defendant No.2 has to be treated as the ostensible owner and rent collector on behalf of the owner, and, therefore, she cannot be evicted on the ground that she is a trespasser.

5. Therefore, the decree passed against her requires to be quashed and set aside. Hence, the Second Appeal is allowed and the decree passed by the Lower Court against the appellant-defendant No.1 is set aside. No costs.

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